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Legislative Services Agency – Legal Services Division

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ELDER ABUSE PREVENTION AND INTERVENTION STUDY COMMITTEE

Meeting Dates: [November 14, 2013](#)

Purpose. *This compilation of briefings on legislative interim committee meetings and other meetings and topics of interest to the Iowa General Assembly, written by the Legal Services Division staff of the nonpartisan Legislative Services Agency, describes committee activities or topics. The briefings were originally distributed in the Iowa Legislative Interim Calendar and Briefing. Official minutes, reports, and other detailed information concerning the committee or topic addressed by a briefing can be obtained from the committee's Internet page listed above, from the Iowa General Assembly's Internet page at <https://www.legis.iowa.gov/index.aspx>, or from the agency connected with the meeting or topic described.*

ELDER ABUSE PREVENTION AND INTERVENTION STUDY COMMITTEE

November 14, 2013

Co-chairperson: Senator Mary Jo Wilhelm

Co-chairperson: Representative Julian Garrett

Background. The Legislative Council approved the Elder Abuse Prevention and Intervention Study Committee on July 18, 2013, and granted one meeting date to monitor the progress of and provide direction to the Task Force on Elder Abuse Prevention and Intervention created for the 2012 Legislative Interim and continued during the 2013 Legislative Interim. The committee is tasked with reviewing the 2013 task force's progress report, approving its final report, and making recommendations to the General Assembly.

Overview of Elder Abuse Prevention and Intervention in the State. The committee received information from a panel regarding what the current system looks like and where there are gaps in the system. The panel also discussed additional background and prior reports and recommendations, including those made by the 2012 task force.

Introduction. Ms. Donna Harvey, Director, Iowa Department on Aging (IDA), provided an overview of elder abuse law, noting that while there is a dependent adult abuse (DAA) law, there currently is no elder abuse law in Iowa; the development of an elder abuse system is at a similar stage in development as the child abuse system was 30 years ago; and since adults have the right to make their own decisions, the child abuse system cannot just be superimposed on an elder abuse system. Under the federal Older Americans Act, the state has an Elder Rights Division in IDA and federal law does define elder abuse. Ms. Harvey noted that prior to convening the 2013 task force, the public entities involved in addressing elder abuse including IDA, the Department of Human Services (DHS), the Department of Inspections and Appeals (DIA), the Office of the Attorney General (AG), the Office of Long-Term Care Ombudsman, Area Agencies on Aging, the Polk County Attorney's Office, and consumers, participated in a LEAN value stream mapping process to determine where there are areas of duplication, silos, and collaboration. State department directors agreed that the system should use a single point of contact to report elder abuse, and specifically the aging and disability resource centers (ADRCs); supported the continuation of the three-year guardianship and conservatorship project at the University of Iowa; supported the Office of Substitute Decision Maker (OSDM); and supported making mandatory reporter training more consistent across all disciplines.

Department of Human Services. Ms. Jone Staley, Dependent Adult Abuse Program Manager, DHS, described the process of intake and disposition of reports of DAA through DHS. Inconsistent training affects the disposition of reports. Any DAA report that is rejected is also referred to the respective county attorney or to DIA, as appropriate. If the report is criminal in nature, the report is also referred to law enforcement. The DHS supervisor makes the determination as to whether the report constitutes DAA. While a single point of contact such as the ADRC would be helpful, additional staffing resources would be needed to manage the additional individuals who might be reported under an expansion of the definition of elder abuse. Although reports are forwarded to county attorneys, county attorneys lack adequate resources and appropriate training.

Department of Inspections and Appeals. Ms. Wendy Dishman, Investigations Division Administrator, DIA, noted that DIA handles DAA reports in health facilities. DIA also addresses financial exploitation and fraud through its Medicaid

Fraud and Divestiture units. Ms. Dishman identified delays in the placement of the names of perpetrators of founded abuse on the registry, the inability to share information among agencies, the lack of resources including at the county attorney level, a reluctance to prosecute what is sometimes perceived as a domestic situation, confusion about what statute to use as the basis for prosecution, and the limitations of the definition of DAA which requires the alleged perpetrator to be a “caretaker” as barriers to enforcing the DAA law. Another issue is the lack of oversight under Iowa’s current powers of attorney law (Iowa Code chapter 633B). Without the OSDM, there is no longer a ready option to find an alternative substitute decision maker to replace an attorney-in-fact or other decision maker who is not complying with fiduciary duties.

Polk County Attorney’s Office. Ms. Celene Gogerty, Assistant Polk County Attorney, noted that many county attorneys are employed part-time and do not have the resources or expertise to prosecute DAA cases. Even the Polk County Attorney’s office does not have full-time staff working on elder abuse reports. These deficits also apply to law enforcement agencies that often do not have adequate training to work with elders, especially when dementia is involved. Ms. Gogerty described the current DAA system under Iowa Code chapter 235B as one which includes three purposes: administrative, which is mainly a process to place perpetrators of founded DAA on the registry for employment purposes; criminal, which provides for the initiation of criminal charges of DAA under Iowa Code §235B.20; and civil, which allows for the issuance of civil orders to initiate or enjoin certain activities. The use of the same definition of DAA for all three purposes is unusual and causes confusion. Defining DAA to require the alleged perpetrator to be a caretaker as a prerequisite to investigating a report results in the report being rejected before services can be provided or orders can be issued to investigate.

Confidentiality requirements are also a barrier especially if the report does not meet the definition of DAA and is rejected outright. Information from a rejected report cannot be shared, thereby prohibiting even a referral for services. Although financial exploitation is much more prevalent than other types of abuse, many times other types of abuse occur along with financial exploitation. The Uniform Power of Attorney Act proposed by the Iowa State Bar Association would help to address financial exploitation. Financial exploitation cases take a lot of time and expertise, and other states are hiring CPAs with the necessary expertise. Ninety percent of perpetrators of abuse are family members or trusted others. The 2013 task force discussed the definition of “elder abuse” and reviewed various options. Other states’ definitions were reviewed, but the variations made a determination of the best fit for Iowa’s law difficult.

Office of the Attorney General. Ms. Chantelle Smith, Assistant Iowa Attorney General, noted that by the time someone contacts the AG to report abuse, it is a last-ditch effort. The AG can contact the appropriate county attorney or law enforcement; however, if a person initially contacts DHS or DIA to report DAA and the case is rejected, the alleged victim is then “trapped” in the system because the information cannot be shared with the AG or IDA. Only the county attorney is specified in the Code for referral of reports. Confidentiality restrictions also prohibit sharing of information for those who need support and services. Information should only be shared on a need-to-know basis within the agencies to ensure respect and dignity. The defunding of the OSDM was a huge loss for people who do not have anyone available to intervene for them. There are crimes that can be charged when a person is assaulted or abused, but these crimes are difficult to prove and many times the victim feels the results are their fault, they are humiliated, or they do not want a family member charged with a crime. Additionally, for a criminal charge of DAA, the alleged perpetrator has to be a caretaker and the alleged victim has to be dependent. It is also difficult to prove the exercise of undue influence. While bankers are not mandatory reporters, they do want to be part of the elder abuse prevention system once a functioning elder abuse system is in place. Banks are able to report suspicious activity and their reports can be used in an investigation through a subpoena. If the definition of DAA is changed to broaden the population of individuals to whom the definition may apply, and the definition of alleged perpetrator is broadened beyond “caretaker,” there will be more cases to address and additional resources will be needed.

Elder Abuse Initiative. Ms. Linda Hildreth, Elder Abuse Program Director, IDA, reviewed the history of the Elder Abuse Initiative (EAI) Demonstration Projects, which were implemented in 22 counties from 2001-2011. Funding through the Senior Living Trust Fund for the projects ended June 30, 2011. The EAI established local partnerships to focus on prevention, intervention, detection, and reporting of elder abuse, neglect, and exploitation by presenting elders with options to enhance their lifestyle choices. Elder abuse is defined under the federal Older Americans Act as abuse, neglect, or exploitation of an individual 60 years of age or older. The clients of the projects were individuals age 60 and over, dependent or independent, not living in health care facilities, and at risk of or experiencing abuse, neglect, or exploitation. Project data was collected from 2007-2011 and during that time there were 12,000 referrals, 66 percent of which involved mental health issues, 44.4 percent of which involved financial exploitation, and only 16 percent of which would have been considered DAA but for lack of involvement of a caretaker or lack of dependency. When abuse existed, it was usually more than one type. If the numbers are extrapolated statewide, there would have been roughly 42,000 referrals. The AG is in the process of reviewing all of the referrals to further explore how to provide assistance.

Office of Substitute Decision Maker. Ms. Deanna Clingan-Fischer, State Long-Term Care Ombudsman, provided an overview of the historical development of the OSDM and the data collected during the operation of the OSDM for which funding was eliminated in 2009. The OSDM provided a substitute decision maker as a last resort to individuals with no

other option, and the least restrictive form of decision maker was used.

Recommendations of the Task Force. The 2013 task force formed three workgroups and each workgroup chairperson presented the recommendations of their respective workgroup:

Centralization Workgroup Recommendations:

- **Specialized Education and Training.** This workgroup recommended development of a single training module to increase knowledge and distinguish between elder abuse and dependent adult abuse. The module can be developed without a change in the law, but the law will need to be changed to require standardized usage of the module, to develop discipline-specific tracks, determine oversight for the curriculum, and require all trainers to be certified and establish core staffing requirements.
- **Single Entry Point of Contact.** The ADRC could be the single point of contact, but DHS would continue to receive and investigate reports of abuse. A mandatory reporter could also contact DHS, but this would be a single point of contact. A single point of contact statewide telephone number could be added to the DHS notice that is sent out indicating if the report is accepted or rejected so that a person could at least get services. Legislative changes would be required to address confidentiality provisions that limit the sharing of information essential to providing intervention and protection.

Elder Abuse Law and Definition Workgroup Recommendations:

- **Defining Elder Abuse.** This workgroup recommended various options, and the majority of workgroup members when surveyed supported an expansion of the definition of DAA to include other situations that define abuse. The workgroup also recommended eliminating a caretaker role as a prerequisite for an accepted report of abuse; moving the criminal provisions in Iowa Code chapter 235B to the criminal statutes portion of the Code; amending Iowa Code chapter 235E to require DIA to inform both the county attorney and the AG of any reports of DAA; expanding the definition of abuse to include emotional and psychological abuse; and providing for the authorization of the use of protective orders.
- **Safeguards for Financial Exploitation.** This workgroup recommended expanding the definition of financial exploitation for the purposes of reporting abuse by mandatory and permissive reporters in long-term care facilities and assisted living programs; creating a petition for relief to obtain a protective order/restraining order to freeze assets in cases of financial exploitation; authorizing recovery of actual damages, punitive damages, attorney fees, and court costs in civil actions for financial exploitation; amending criminal provisions relating to theft and degree of theft to include new offenses or to enhance penalties when financial exploitation of an elder is involved; removing any requirement that the perpetrator act for their own profit when defining financial exploitation; addressing other definitions, statute of limitations provisions, and reports to law enforcement; and requiring financial institutions to act as mandatory reporters once an elder abuse system is in place.
- **Laws Relating to Powers of Attorney, Conservatorship Abuse, and OSDM.** This workgroup recommended the adoption of the Uniform Power of Attorney Act as modified by the Iowa State Bar Association; the creation of a registry for powers of attorney; implementation of background checks for prospective conservators; allowing a guardian ad litem to be appointed when an elder is the victim or witness in a criminal case; and continuation of funding of the guardianship/conservatorship monitoring and assistance pilot project at the University of Iowa.
- **Multidisciplinary Teams (MDTs).** This workgroup recommended reviewing MDTs to determine how prevalent they should be throughout the state to serve older Iowans better; researching the establishment of a state MDT to act in a consultative capacity to local MDTs; expanding MDT powers and functions to address abuse issues; and addressing confidentiality statutes to allow state and local governmental entities to collaborate and share essential confidential information as necessary to provide protection and intervention.
- **Single Point of Contact.** This workgroup also recommended the establishment of a single point of contact for reporting of elder abuse.

OSDM/Referrals/Services Workgroup Recommendations:

- **OSDM.** This workgroup recommended various alternatives for operationalizing the OSDM. The workgroup prioritized fully funding the OSDM and expressed concern that the option of eliminating the OSDM was not a viable option. Other options included a phase-in of the OSDM.
- **Elder Abuse Initiative System.** The elder abuse initiative previously implemented in 22 counties is the recommended system to implement statewide to focus on prevention, intervention, detection, and provision of

services to maintain the health, welfare, safety, and resources of older Iowans.

- **Allocation of Service Dollars.** Funding for services is needed to ensure protection and safety. A fund should be established for emergency services.
- **Safe Havens.** Safe havens should be created in specific locations for older Iowans who need a safe place to stay.

Committee Recommendations. Each of the members of the committee voiced their specific priorities for moving forward, and their recommendations are recorded in the minutes of the meeting.

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